

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

MARLEN LUNA, M.D.)

Case No. 800-2016-021838

**Physician's and Surgeon's)
Certificate No. A117215)**

Respondent)

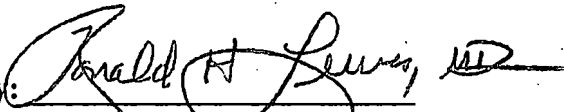
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 22, 2019.

IT IS SO ORDERED January 25, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 

Ronald Lewis, M.D., Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 CHRIS LEONG
Deputy Attorney General
4 State Bar No. 141079
California Department of Justice
5 300 South Spring Street, Suite 1702
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Attorneys for Complainant

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 MARLEN LUNA, M.D.

14 5119 Pomona Boulevard, Suite 5151
Los Angeles, CA 90022

15 Physician's and Surgeon's Certificate
16 No. A 117215,

17 Respondent.

Case No. 800-2016-021838

OAH No. 2018050200

18 **STIPULATED SETTLEMENT AND**
19 **DISCIPLINARY ORDER**

20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Chris Leong,
25 Deputy Attorney General.

26 2. Marlen Luna, M.D. (Respondent) is represented in this proceeding by attorney Paul
27 Joseph Spackman, Esq., whose address is: 28441 Highridge Road, Suite 201, Rolling Hills
28 Estates, California 90274-4871.

3. On June 11, 2011, the Board issued Physician's and Surgeon's Certificate No. A 117215 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-021838, and will expire on April 30, 2019, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-021838 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 3, 2018. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-021838 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-021838. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2016-021838, if proven at a hearing, constitute cause for imposing discipline upon her Physician's and Surgeon's Certificate.

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IT IS FURTHER ORDERED that Respondent comply with the following:

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the decision(s), accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) days and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

4

1 Determination as to whether Respondent successfully completed the clinical competence
2 assessment program is solely within the program's jurisdiction.

3 If Respondent fails to enroll, participate in, or successfully complete the clinical
4 competence assessment program within the designated time period, Respondent shall receive a
5 notification from the Board or its designee to cease the practice of medicine within three (3)
6 calendar days after being so notified. The Respondent shall not resume the practice of medicine
7 until enrollment or participation in the outstanding portions of the clinical competence assessment
8 program have been completed. If the Respondent does not successfully complete the clinical
9 competence assessment program, the Respondent shall not resume the practice of medicine until a
10 final decision has been rendered on a subsequently filed accusation.

11 ACCEPTANCE

12 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
13 discussed it with my attorney, Paul Joseph Spackman, Esq. I understand the stipulation and the
14 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated
15 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
16 bound by the decision and order of the Medical Board of California.

17
18 DATED: 11/16/18

Marlen Luna
MARLEN LUNA, M.D.
Respondent

20 I have read and fully discussed with Respondent Marlen Luna, M.D. the terms and
21 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
22 I approve its form and content.

23
24 DATED: 11/16/2018

Paul Spackman
PAUL JOSEPH SPACKMAN, ESQ.
Attorney for Respondent

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26 ///

27 ///

28 ///

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated:

11/16/2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General



CHRIS LEONG
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2016-021838

1 XAVIER BECERRA
2 Attorney General of California
3 JUDITH T. ALVARADO
4 Supervising Deputy Attorney General
5 California Department of Justice
6 State Bar No. 155307
7 300 South Spring Street, Suite 1702
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11 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 3, 2018
BY: *[Signature]* ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2016-021838

Marlen Luna, M.D.
5119 Pomona Blvd.
Los Angeles, CA 90022

ACCUSATION

Physician's and Surgeon's Certificate
No. A 117215,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about June 8, 2011, the Medical Board issued Physician's and Surgeon's Certificate Number A 117215 to Marlen Luna, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2019, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2227 of the Code provides that a licensee who is found guilty under the
2 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
3 one year, placed on probation and required to pay the costs of probation monitoring, or such other
4 action taken in relation to discipline as the Board deems proper.

5 5. Section 2234 of the Code, states:

6 “The board shall take action against any licensee who is charged with unprofessional
7 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
8 limited to, the following:

9 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
10 violation of, or conspiring to violate any provision of this chapter.

11 “(b) Gross negligence.

12 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
13 omissions. An initial negligent act or omission followed by a separate and distinct departure from
14 the applicable standard of care shall constitute repeated negligent acts.

15 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate
16 for that negligent diagnosis of the patient shall constitute a single negligent act.

17 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
18 constitutes the negligent act described in paragraph (1), including, but not limited to, a
19 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
20 applicable standard of care, each departure constitutes a separate and distinct breach of the
21 standard of care.

22 “(d) Incompetence.

23 “(e) The commission of any act involving dishonesty or corruption which is substantially
24 related to the qualifications, functions, or duties of a physician and surgeon.

25 “(f) Any action or conduct which would have warranted the denial of a certificate.

26 “(g) The practice of medicine from this state into another state or country without meeting
27 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
28

1 apply to this subdivision. This subdivision shall become operative upon the implementation of
2 the proposed registration program described in Section 2052.5.

3 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
4 participate in an interview by the board. This subdivision shall only apply to a certificate holder
5 who is the subject of an investigation by the board.”

6 6. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
7 adequate and accurate records relating to the provision of services to their patients constitutes
8 unprofessional conduct.”

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Repeated Negligent Acts)**

11 7. Respondent is subject to disciplinary action under Code section 2234, subdivision (c),
12 in that she committed repeated negligent acts in her care and treatment of Patient A.¹ The
13 circumstances are as follows.

14 8. Patient A was a 27-year-old-female and a member of Southern California Permanente
15 Medical Group (Kaiser). She presented to Dr. A.B. on March 29, 2014, complaining of nausea,
16 vomiting and yellowing of her eyes for the past 2 -7 days. Dr. A.B. assessed Patient A for
17 hepatitis² and ordered laboratory studies, including an Alanine Aminotransferase³ (ALT), Total
18 Bilirubin⁴ and viral hepatitis panel. He did not document a scleral⁵ exam, however.

19 9. On March 31, 2014, Respondent reviewed the result of Patient A's laboratory tests
20 and noted that several tests results were elevated. Specifically, ALT was 1400 (normal <54),
21 Total Bilirubin was 10.2 (normal <1.0), Direct Bilirubin was 5.7 (normal <0.2-1.2), and the
22 hepatitis test were all non-reactive, which is normal. Respondent had her nurse call Patient A to
23 advise her to go to the emergency department if she developed any pain, fever or chills. Her

24 ¹ In this Accusation, the patient is referred to as “Patient A”. The patient's full name will
25 be disclosed to Respondent when discovery is provided pursuant to Government Code section
11507.6.

26 ² Inflammation of the liver.

27 ³ Blood test that checks for liver damage.

28 ⁴ The measure of direct and indirect bilirubin in the blood. Elevated levels may indicate
liver damage or disease.

⁵ The white outer layer of the eyeball.

1 differential diagnosis on that date included: sepsis, gall bladder issues, or liver issues.

2 Respondent ordered an abdominal ultrasound for Patient A to be done that day.

3 10. Patient A presented to Respondent in her clinic on April 1, 2014. Respondent noted
4 that the patient's sclera were icteric⁶ and she had dark urine since March 27, 2014. Repeat
5 laboratory studies remained elevated: ALT (now 1386), Alkaline Phosphatase⁷ now 164 (normal
6 <125), Total Bilirubin (now 17.8), Direct Bilirubin (now 9.4), and Aspartate Aminotransferase⁸
7 (AST) now 1326 (normal <30). The results of the abdominal ultrasound were of a non-specific
8 coarsened liver. Respondent noted that Patient A had no pain and no symptoms of sepsis.
9 Respondent's plan was to continue the sepsis work-up and arrange a specialty referral pending the
10 results. She advised the patient to return "as scheduled" but, if her symptoms did not improve or
11 worsened, she should return to the office. Respondent failed to advise Patient A that she should
12 seek care at the emergency department, or note that she had done so.

13 11. Patient A returned to see Respondent on April 3, 2014. Respondent noted that Patient
14 A had worsening jaundice,⁹ with worsening Total Bilirubin/Direct Bilirubin. The patient had a
15 referral to the Liver Specialist scheduled for April 7, 2014. Laboratory tests were to be redrawn.
16 Respondent noted that she expected the results to be elevated as the patient was more fatigued
17 and nauseous and had a new complaint of right upper quadrant abdominal pain. She explained
18 the etiologies to the patient and suggested she might need a liver transplant. It is noted that
19 Patient A was receptive to the information. The laboratory results were elevated: ALT was 1186,
20 Alkaline Phosphatase was 193, Total Bilirubin was 20.8, and AST was 1144. An EKG was
21 performed and was abnormal, suggestive of anterior ischemia. A transthoracic echocardiogram
22 and cardiology referral were made. In her letter to the Board, Respondent states that she directed
23 Patient A to go directly to the emergency department as her liver was dying. This directive is not
24 noted in the patient's medical record and Patient A did not proceed directly to the emergency
25 department.

26 ⁶ A yellow color to the eyes caused by an excess of bilirubin, a substance created when
27 red blood cells break down.

28 ⁷ High Levels may indicate a problem with the liver or gall bladder.

⁸ Blood test that checks for liver damage.

⁹ Yellow color of the skin or eyes caused by an excess of bilirubin.

1 12. On April 7, 2014, Dr. J.T. referred Patient A to the emergency department at Kaiser.
2 He noted that the patient had significant hepatitis. He arranged for numerous tests and alerted the
3 emergency department about her case. Ultimately, Patient A was admitted to the intensive care
4 unit. She was transferred to UCLA Medical Center for a liver transplant on April 8, 2014.
5 Patient A died on April 12, 2014.

6 Standard of Care

7 13. The standard of care when evaluating acute hepatitis includes evaluation of organ
8 function to include AST, ALT, Alkaline Phosphatase, gamma-glutamyl transpeptidase, Total and
9 Direct Bilirubin, albumin and INR¹⁰ levels. Etiology of hepatitis should be investigated and using
10 viral hepatitis panel and liver ultrasound. A physical examination of the skin, abdomen and
11 neurologic system should be completed.

12 14. The standard of care in sepsis evaluation and treatment is early goal directed therapy
13 within six hours of recognition. This requires immediate admission to an acute care setting, such
14 as an emergency department or intensive care unit. A serum lactate level should also be obtained.

15 15. Respondent's treatment of Patient A as set forth above includes the following acts
16 and/or omissions which constitute departures from the standard of practice:

- 17 A. The failure to order an INR level, which may have demonstrated a
18 coagulopathy, further quantifying the extent of liver injury;
19 B. The failure to appreciate the urgency of Patient A's compromising situation and
20 arrange for an emergency GI evaluation;
21 C. The failure to recognize the signs and symptoms of sepsis; and
22 D. The failure to admit the patient for immediate treatment.

23 16. Respondent's acts and/or omissions as set forth in paragraphs 7 through 14, above,
24 whether proven jointly, or in any combination thereof, constitute repeated negligent acts pursuant
25 to section 2234, subdivision (c), of the Code. Therefore, cause for discipline exists.

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27 _____
28 ¹⁰ International normalized ratio or standardized prothrombin time. This test measures the
time it takes for blood to clot.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate and Accurate Records)**

3 17. By reason of the matters alleged in paragraphs 7 through 11, inclusive, above,
4 Respondent is subject to disciplinary action under section 2266 of the Code in that she failed to
5 properly maintain adequate and accurate medical records documenting her care of Patient A.
6

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Medical Board of California issue a decision:

10 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 117215,
11 issued to Marlen Luna, M.D.;

12 2. Revoking, suspending or denying approval of Marlen Luna, M.D.'s authority to
13 supervise physician assistants and advanced practice nurses;

14 3. Ordering Marlen Luna, M.D., if placed on probation, to pay the Board the costs of
15 probation monitoring; and

16 4. Taking such other and further action as deemed necessary and proper.
17

18 DATED: January 3, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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